

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

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NEW MEXICO UNITED FOOD AND  
COMMERCIAL WORKERS UNION'S AND  
EMPLOYERS' HEALTH AND WELFARE TRUST  
FUND, on behalf of itself and all others similarly  
situated,

Plaintiff,

v.

PURDUE PHARMA L.P., PURDUE PHARMA,  
INC., THE PURDUE FREDERICK COMPANY,  
INC. d/b/a THE PURDUE FREDERICK  
COMPANY, P.F. LABORATORIES, INC.,  
ABBOTT LABORATORIES, ABBOTT  
LABORATORIES, INC., MICHAEL FRIEDMAN,  
HOWARD R. UDELL, PAUL D. GOLDENHEIM,  
JOHN DOE Nos. 1 through 20, and JANE DOE Nos.  
1 through 20,

Defendants.

Civil Action No. 07-cv-6916-JGK

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AMERICAN FED'N OF STATE, COUNTY &  
MUNICIPAL EMPLOYEES, DISTRICT  
COUNCIL 47 HEALTH AND WELFARE FUND,  
et al.,

Plaintiffs,

v.

PURDUE PHARMA L.P., and THE PURDUE  
FREDERICK COMPANY, INC.

Defendants.

Civil Action No. 07-8761-JGK

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MEMORANDUM IN SUPPORT OF JOINT MOTION FOR MODIFICATION OF  
CASE MANAGEMENT SCHEDULE AND  
FOR ENTRY OF [PROPOSED] CASE MANAGEMENT ORDER NO. 3

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR MODIFICATION OF  
CASE MANAGEMENT SCHEDULE AND  
FOR ENTRY OF [PROPOSED] CASE MANAGEMENT ORDER NO. 3**

Since the status conference held before this Court on November 29, 2007, and the Court's setting of the case management schedule for this case, as per the Rule 26(f) Joint Report by the Parties and Proposed Case Management Order (Document No. 59), filed on December 14, 2007, certain events have occurred which now lead the parties<sup>1</sup> to seek a modification of the current case management schedule. Based upon those events described below, the parties request that the Court enter the attached Proposed Case Management Order No. 3.

The Purdue Defendants, the Abbott Defendants and the Individual Defendants have filed Motions with the Court pursuant to Rule 12 of the Federal Rules of Civil Procedure. The initial briefing on those motions was concluded on February 19, 2008, as per the case management schedule. Thereafter, additional briefing relating to supplemental authority was filed, which briefing was concluded on July 3, 2008.

The parties have served multiple sets of document requests upon one another and some responsive documents have been exchanged. Respecting certain document requests

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<sup>1</sup> The parties shall be defined as follows: "*Plaintiffs*" shall refer collectively to plaintiffs New Mexico United Food and Commercial Workers Union's and Employers' Health and Welfare Trust Fund, American Federation of State, County and Municipal Employees, District Council 47 Health and Welfare Fund, Philadelphia Firefighters Local 22 Fund, and National Council of Firemen and Oilers Local 1201 Health and Welfare Fund; the "*Purdue Defendants*" shall refer to defendants Purdue Pharma L.P., Purdue Pharma, Inc., The P.F. Laboratories, Inc. and The Purdue Frederick Company Inc.; the "*Individual Defendants*" shall refer to defendants Michael Friedman, Howard Udell, and Paul Goldenheim; and the "*Abbott Defendants*" shall refer to defendants Abbott Laboratories and Abbott Laboratories, Inc.

to which objections have been lodged, the parties have met and conferred in an effort to resolve those objections.

Having reached an impasse as to certain issues respecting Defendants' document productions, counsel for Plaintiffs wrote to the Court on June 24, 2008 to request an Informal Discovery Conference, as is required per Local Civil Rule 37.2 before a motion to compel may be filed. On June 30, 2008, counsel for the Defendants also wrote the Court to request that certain issues respecting Plaintiffs' document productions also be heard by the Court at the conference.

On July 1, 2008, this Court issued an Order referring the case to Magistrate Judge Frank Maas for the purpose of resolving the discovery disputes. On July 3, 2008, Magistrate Judge Maas set a conference date and requested that the parties submit a joint letter describing the disputes. The parties began to work on the joint letter, but, prior to completing same were advised, on July 15, 2008, as per the Memorandum dated July 14, 2008 from Magistrate Judge Maas to Ms. Guranich of Case Assignment, that Magistrate Judge Maas had a conflict, would be unable to hear the matter, and that he was requesting that the matter be referred to another Magistrate Judge. In the past few days, the matter was referred to Magistrate Judge Michael H. Dolinger; and a discovery conference has been scheduled for August 12, 2008.

Currently, under the existing case management schedule, Plaintiffs' motion for class certification and the Rule 26 disclosures and reports of their experts relating to class certification are due on September 2, 2008. Plaintiffs submit that certain discovery needed by Plaintiffs related to their class certification motion papers is currently in

dispute. Plaintiffs therefore respectfully request that the case management schedule be modified in order to allow additional time for the discovery dispute to be resolved.

Defendants do not oppose Plaintiffs' suggested modification to the discovery schedule. However, Defendants have requested and Plaintiffs have agreed that the modification to the discovery schedule also would include a provision delaying the start of deposition discovery. Thus, the parties have agreed to add Section 6(b) to the proposed revised case management schedule, which section provides that depositions may not be noticed to commence until -- at the earliest -- October 6, 2008.<sup>2</sup>

The parties have structured the new proposed case management schedule such that the trial date, set forth in Section 10, was delayed only sixty (60) days, from October 9, 2009 to December 8, 2009, such that the trial remains scheduled in 2009. The parties respectfully request that the Court enter the Proposed Case Management Order No. 3, attached.

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<sup>2</sup> The parties have further agreed that this provision does not alter their respective abilities to propose (or to move or to oppose) a further stay of deposition discovery nor the parties' respective abilities to challenge the relevancy or propriety of particular depositions that are noticed pursuant to this provision.

No previous requests for adjournment or extension of the case management schedule have been made.

*Submitted:* July 31, 2008

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